

# ABOUT GROWTH

A Quarterly Publication About Growth Management

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## GMA changes focus on rural areas, hearings boards, and monitoring

By Harry Reinert  
Executive Director, Land  
Use Study Commission

**W**hen the Legislature created the Land Use Study Commission in 1995, it gave it several tasks. The commission's first year of work focused on how the state's land use and environmental statutes were functioning.

As a result of several months of public hearings, the commission directed its attention to a limited number of subjects that it believed would improve the Growth Management Act, while maintaining a commitment to the overall goals and objectives of the GMA.

The commission's recommendations were incorporated into ESB 6094, which was passed by the Legislature and signed by the Governor. In addition to the commission's recommendations, the Legislature also added several other provisions, most of which the Governor vetoed from the bill.

There are three areas included in ESB 6094 that will be of particular interest to local governments and members of the public who follow growth management issues: 1) the rural element; 2) growth management hearings board authority; and 3) monitoring comprehensive plan implementation.

### Rural Element

The rural element has proved to be one of the more troublesome aspects of the GMA. Issues relating to county decisions about rural areas have been a part of nearly every appeal of a county comprehensive plan and of nearly every county comprehensive plan that has been

found invalid by a growth management hearings board.

Beyond this obvious problem, the lack of substantive guidance about the rural element has also been a significant factor in the criticisms of the boards and complaints that the GMA does not allow sufficient flexibility to local governments.

The commission concluded that a key element of improving the GMA was providing greater guidance to the counties and the boards about what development was appropriate in rural areas. With a more defined state framework, counties will have a better sense of what choices are within the bounds of the GMA. At the same time, the boards will not be forced into interpreting an ambiguous statute.

The commission's proposal as implemented in ESB 6094 explicitly recognizes rural development as a component of county comprehensive planning. Counties are clearly given the authority to make decisions for their communities and may take local circumstances into account.

With this authority, comes certain responsibilities. Counties must develop a written record explaining how the rural element "harmonizes the ... goals ... and meets the requirements" of GMA. Counties must also implement measures to protect rural character. These measures include controlling development, assuring visual compatibility, reducing sprawl, protecting critical areas, and protecting against resource conflicts.

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## ABOUT GROWTH

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# Clark County considers rural changes to the Growth Management Act

By Craig Greenleaf  
 Clark County Planning Director

**W**ith the passage of ESB 6094 begins a recognition that development over the first 100 years of Washington was not guided by the Growth Management Act.

Try as we might to direct and manage growth as would be expected under the GMA, counties in particular are the inheritors of historical fact with all of its good and all of its bad. Certainly, many decisions that could be reevaluated in the bright light of today's policies, values, and standards were not held to them when they first were decided.

ESB 6094 recognizes life before the GMA. This is an encouraging sign, but one that will not be fully evaluated until further interpreted by the growth management hearings boards. Although the legislation is somewhat abstract, it does help counties to set rural policy by defining what constitutes rural character, development, and services.

The new amendments to the GMA define rural character as development that fosters traditional rural lifestyles, economies, and opportunities to live and work in rural areas and that reduce inappropriate conversions of undeveloped land into sprawling, low-density developments. The amendments further define rural development as a variety of uses and residential densities at levels that preserve rural character. Services may be provided that support rural patterns and densities.

These provisions of the plan must be carried out through development regulations. A new requirement which is not applied to cities requires that rural development be

visually compatible with the surrounding rural area. This potentially could be a particularly troublesome standard. For example, how is surrounding area defined? What does visually compatible mean?

One of the most specific benefits of the new law is recognition of areas of existing development. These crossroads locations, villages, hamlets, and activity centers are both recognized and allowed to infill so long as they are properly regulated, contained, and managed so that they do not change the service demands of the area.

The acknowledgment of the rich and diverse historical patterns of development is a welcome addition to the directives of the GMA. The one out of four people in this state who have chosen to live in these rural areas will likely benefit from these changes.



Craig Greenleaf



# "Buildable Lands." Where to from here?

By Rob Odle

Planning Director, Bellevue Department  
of Planning and Community Development

**B**y now all of us realize that there have been a few more changes brought to the Growth Management Act by ESB 6094.

For those of us in Western Washington and in counties greater than 150,000 residents (1995), ESB 6094 has brought a requirement to monitor the intensity and density of development to determine "whether a county and its cities are achieving urban densities sufficient to meet the state growth projections." If development is not of sufficient density, then "reasonable measures" other than adjusting urban growth areas must be taken to comply with the requirements.

Section 25 of ESB 6094 contains these requirements. While not called "buildable lands," there are strong similarities between this requirement and other buildable lands bills proposed in our Legislature over the past two sessions.

What do we need to do to meet this new requirement? While I'm sure over the next year we'll debate the intricacies of this requirement and hopefully reach some common understandings, I believe ESB 6094 requires:

- 1) The designated counties and their cities to develop county-wide planning policies to establish a monitoring and review system for growth and to build into this system a dispute resolution process for inconsistencies.
- 2) Through this system, collect information — dating from the comprehensive plan's adoption — on development (both residential and commercial/industrial) and identify land utilization rates.
- 3) Then, based on rates of consump-

tion for the period of the evaluation, project the amount of land necessary to accommodate the county-wide population projection for the remaining portion of the 20-year planning period. Do the same for commercial/industrial land.

- 4) By September 1, 2002, and every five years thereafter, compare projected need (from item 3 above) to the capacity available to accommodate growth as indicated in the adopted comprehensive plans.
- 5) If an inconsistency (lack of capacity) is identified, the county and its cities need to adopt and implement measures that are "reasonably likely" to increase consistency during the next five year period by a method other than adjusting the urban growth area boundaries.
- 6) Above all, throughout the above steps, jurisdictions must be able to demonstrate the veracity of our work and the soundness of our logic.

Many of you may be aware that over the last few years King County, through its county-wide planning policies, has developed a standardized method for measuring land capacity. Likewise, a benchmarks program was created. One facet of this program looks at land use and growth. So can we look at this new buildable lands requirement and say, "Been there, done that"? I don't think so.

Although King County has a rational basis for looking at current land capacity and has begun collecting information that will be of use in establishing annual growth reports, more work with greater detail will be necessary to meet the needs of Section 25.

The work necessary to collect annual information in a timely manner on each site as it develops will be a daunting, time consuming, and expensive task for our 36 jurisdictions.

While much of King County's work has been supported with GMA grants, those sources are reduced, and it is very unclear how much money actually will be available from the state for meeting the requirements of Section 25.



Rob Odle

Now that most local comprehensive plans are in place, local planning staff and resources are focused on implementing their plans. Finding the resources to collect and process information locally, and then amassing and analyzing the data countywide will be a major management issue.

Without sufficient funding, I foresee major dilemmas for jurisdictions with limited resources and multiple planning priorities. Also, Section 25 indicates the need to go back and establish land utilization for all development that has occurred since the local plan's adoption.

In addition, for counties that have not identified employment targets, the commercial/industrial side of Section 25 raises significant issues not only for monitoring but for first establishing acceptable county-wide and local employment targets. Then, discussion must occur on how employment will be segregated between commercial and industrial sectors.

Probably few would argue with a requirement to monitor and evaluate how we are doing with our county-wide and local plans. Many jurisdictions have added monitoring provisions to their county-wide planning policies or local plans.

I hope over the next few months we can look collectively at Section 25



# New legislation changes GMA and water policy

## ESB 6094

ESB 6094 gives further direction on land use policies for rural areas, makes changes to growth management hearings boards' procedures, and amends other areas of the GMA. It also includes ESB 1724 technical amendments. ESB 6094 is based largely on the recommendations of the Land Use Study Commission. CTED will provide technical assistance on these subjects to local governments.

Here are the main points of ESB 6094.

### Rural element

"Rural character," "rural development," and "rural governmental services" are defined. The definition of "urban growth" is amended to clarify the relationship between the rural element, natural resource lands, and urban growth.

The ability of counties to consider local circumstances in developing the rural element is recognized. The rural element is to provide for rural development, agriculture, and forestry that is consistent with rural character.

Rural development cannot require urban services, with some exceptions. More intensive rural development is allowed in limited areas where such development already exists.

In establishing these areas, a county needs to incorporate measures that do not allow the area to expand beyond its outer boundaries.

Industrial areas and tourist uses are not required to be principally designed to serve the rural population. "Existing uses" are defined as those uses existing on the date a

county was required to or chose to plan under the GMA.

Counties are to develop a written record explaining how the rural element harmonizes the planning goals and meets the requirements of the GMA.

### Growth management hearings board review

The boards are to apply a more deferential standard of review to the actions of cities and counties than the

"preponderance of the evidence" standard. They are to find compliance with the GMA unless

they determine that the county's or city's action is "clearly erroneous in view of the entire record ... and in light of the goals and requirements" of the GMA.



### Invalidity orders

If a county or city is under an invalidity order, it may adopt interim controls, to be approved by the board, under which applications may vest.

A county or city subject to an invalidity order issued prior to SHB 6094's effective date may request a board to review the order in light of the changes to the invalidity provisions under this new law.

### Optional appeal directly to superior court

If all parties to a case before a board agree, the case may be transferred to superior court.

### Public participation

GMA counties and cities are to adopt procedures for notifying property owners and other affected or interested parties of proposed amendments to comprehensive plan and development regulations. The procedures generally follow the notice requirements currently in the State Environmental Policy Act rules.

A county or city considering an amendment to a comprehensive plan or development regulation amendment needs to allow for public comment on the proposed change before adoption.

### Capital facilities element / monitoring and evaluation

A comprehensive plan may be amended more than once a year, if the amendment is to the capital facilities element and if it occurs along with the adoption of the county or city budget. Comprehensive plans and development regulations are to be reviewed and revised as appropriate, at least every five years.

**SSB 5521 authorizes the Municipal Research Center to serve counties. Funds for this service will come from the counties portion of the liquor excise tax. The Municipal Research Council's board, which oversees MRSC, is expanded from 18 to 23 members to include five county officials.**



### Buildable lands pilot projects

Six Western Washington counties and the cities located within their boundaries are to establish a monitoring and evaluation program to determine if the county-wide planning policies are meeting planned residential densities and uses. The evaluation is to be conducted every five years.

If the evaluation shows that the GMA goals are not being met, the local governments are to take measures to meet those goals. The county may adjust the urban growth boundary after three years of taking measures. CTED will provide grants and technical assistance.

### OFM population projections

The Office of Financial Management is to issue 20-year growth management population projections every five years.

### Public Works Trust Fund and Centennial Clean Water Fund

Grants can be provided to a GMA county or city that is not in compliance with the GMA when the grant is needed to address a public health need or substantial environmental degradation.

### Zoning in agricultural lands

A variety of innovative zoning techniques in designated agricultural lands of long-term significance are allowed.

### Current use taxation

Land designated for long-term agriculture under the GMA and land located outside an urban growth area designated as agricultural land is eligible for the current use taxation program, regardless of the minimum amount of income generated from agricultural activities.

### Taxation of designated natural resource lands

Regarding property tax valuation of designated natural resource lands, a county assessor may not include comparable sales that have been converted to nonagricultural, nonforest, or nonopen-space uses within five years after the sale.

### Annexations

Code cities are allowed to annex an area of any size if at least 80 percent of the area was contiguous with the city before June 30, 1994, the area is within the same county and UGA, and the city was planning under GMA as of June 30, 1994. Boundary review boards are required to consider comprehensive plans and development regulations adopted



under GMA, applicable service agreements, and interlocal annexation agreements.

### Tax incentives for multifamily housing

The largest city or town in a county planning under GMA, if there is no city or town with a population of at least 100,000 will be able to establish a program for tax incentives for multifamily housing.

### Adverse possession

Adverse possession is prohibited on property designated as open space

to a public agency or homeowner's association.

### Technical corrections to ESB 1724

The new law: 1) clarifies consistency review requirements; 2) authorizes CTED to jointly develop rules with the state Department of Ecology to assist local governments to analyze the consistency of project actions; 3) clarifies that local governments are not required to provide administrative appeals of a threshold

determination; 4) allows SEPA procedural appeals of public projects and

non-project actions to occur before the substantive decision; and 5) provides that shoreline master programs adopted by Ecology before July 22, 1995, are considered approved by Ecology.

### Other legislative action

**SHB 1513** extends the Commute Trip Reduction Act to July 1, 2006. It reduces commute trip goals in the act from 25 to 20 percent in 1997 and from 35 to 25 percent in 1999. The goal of 35 percent is extended to 2005.

**SHB 2083** broadens the definition of master planned resort to include existing resorts established prior to July 1, 1990, if they meet certain criteria. A county may allocate part of its 20-year population projection to the master planned resort if the estimated number matches the projected number of permanent residents in the master planned resort.

**2SHB 2054** establishes a locally-driven water resources planning process for single or multiple water



# New legislation changes GMA and water policy

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resource inventory areas. It declares storage development to be a high priority for consideration. Ecology is required to put a high priority on adjudicating watersheds recommended by a watershed plan. This law allows an expansion of the area irrigated by allowing the transfer of consumptive use savings.

**SSB 5313** establishes the Advance Transportation Environmental Mitigation Revolving Fund. It will allow the Washington State Department of Transportation to acquire and/or develop environmental mitigation sites in advance of the construction of projects.

**ESSB 5273** encourages, as an option, advanced compensatory mitigation and off-site mitigation where it is deemed appropriate and beneficial for resources, and for accommodating necessary or unavoidable development in sensitive habitat areas. Ecology and the Department of Fish and Wildlife are to consider compensatory mitigation that is proposed in a development plan.

**ESSHB 1866** establishes a voluntary environmental excellence program. It allows state agencies, after consultation with all affected stakeholders, to sign agreements with those they regulate that contain conditions different from those that would be imposed under existing statutes.

**ESHB 2170** designates certain industrial investments as "projects of statewide significance" that merit special treat-

ment by state and local governments to expedite their completion. CTED will assign an ombudsman for such projects, who will assemble a team of state and local officials to oversee planning, permitting, licensing, and other issues.

**SSB 5056** specifies that real property subject to taxation may not be assessed at a level that assumes a higher use of the land than that permitted under zoning or other land use laws that exist at the time of the appraisal.

**SSB 5462** allows the SEPA threshold determination to be issued with the notice of application.

**SSB 5714** transfers a portion of the state Department of Natural Resources' responsibilities for the administration and enforcement of forest practices regulations. By December 2001, city and county

governments may administer and enforce forest practices related to the conversion of forest lands to non-forested uses in urban growth areas.

**SHB 1565** exempts small scale prospecting and mining from the hydraulic permit statute, if it is conducted according to rules established by Fish and Wildlife.

**HB 1525** removes the July 1 deadline for the adoption of six-year transportation programs and allows local governments to adopt the plans at any time before the adoption of the local budget.

**SHB 1402** allows cities, counties and WSDOT to create assessment reimbursement areas—without the participation of a private property owner—to finance the costs of road or street improvements, and to become the sole beneficiary of the reimbursements that are contributed.



Doug Porter, president of the Growth Management Institute in Chevy Chase, Maryland, talks with conference participants at the recent "Redevelopment for Livable Communities Conference" in Tacoma. Sponsored by the Energy Outreach Center and Puget Sound Regional Council, the conference featured presentations on redevelopment programs and roundtable discussions to help pave the way for collaborative and successful redevelopment in communities. For a conference report, call the regional council at 206-464-7090.



## GMA changes focus on rural areas, hearings boards, and monitoring

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One issue presented to the commission repeatedly was the problem of those places in rural areas that are already developed, although not to urban densities. The commission recognized that both for reasons of equity as well as for concentrating rural development in those already developed areas, more intensive development should be allowed in some limited circumstances.

ESB 6094 includes three types of "exceptions" to the general rule that development in rural areas cannot be urban in nature.

- One exception applies to infill of existing developed areas. These might include crossroads, hamlets, or shoreline areas already characterized by development.
- A second exception applies to new or redeveloped small-scale recreational or tourist uses. These cannot include new residential development.
- A third exception covers intensification of isolated existing non-residential uses or isolated new or existing cottage industries or small-scale businesses. A county must impose controls on these areas of more intensive development.

There is also a requirement that the uses or areas have been in existence on the date the county was required to plan under the GMA or the date the county decided to plan under the GMA if it was not required to do so.

### Growth Management Hearings Boards

The growth management hearings boards have been the focal point for much of the debate over the GMA. The commission concluded that, although there were reasons to modify some aspects of the boards'

authority, for the present it could not recommend substantial changes to their responsibilities or procedures. ESB 6094 includes a number of adjustments to board procedures. Some of the more significant changes include:

- Modifying the standard the boards use to review local government GMA decisions. The standard was changed to a "clearly erroneous" test which gives greater weight to local decisions than the standard currently in the GMA
- Reinforcing the requirement that the boards follow the Administrative Procedures Act, with particular emphasis on limiting contact with parties
- Giving the boards additional flexibility to extend the period for issuing decisions and holding compliance hearings
- Clarifying the impact of orders of invalidity and the procedures and standards that apply when a county or city seeks to have an order of invalidity modified or lifted.
- Allowing the parties to a proceeding to agree to have the case heard in superior court rather than before a board.

### Monitoring and Evaluation

ESB 6094 includes a provision requiring six Western Washington counties to develop a monitoring and evaluation program to examine how successful those counties and their cities are in meeting some of their county-wide planning policy and comprehensive plan objectives.

This requirement is an outgrowth of a concern expressed by the business and development communities that counties and cities are not meeting densities necessary to meet housing and economic development needs. Environmental organizations

also expressed concerns that local governments were not satisfying the GMA requirement to protect critical areas.

ESB 6094 requires all GMA jurisdictions to conduct a review of their comprehensive plans on a five year cycle. In addition, King, Snohomish, Pierce, Kitsap, Thurston and Clark counties must specifically evaluate whether they are achieving urban densities within urban growth areas and are meeting the objectives of the county-wide planning policies and comprehensive plans.

The evaluation must be conducted every five years, with the first evaluation due in 2002. If the evaluation shows that objectives are not being met, the county and its cities are required to take appropriate actions designed to correct the problems. The Legislature appropriated \$2 million to help pay for the added costs of this program.

### Conclusion — What's next?

The commission is beginning work on its priorities for next year. At the top of the list is an examination of infrastructure finance needs and options to cover those needs. The commission as a whole has concluded that for GMA to be successful in the long run, infrastructure to support current residents and growth will be necessary.

A second area will be an examination of the relationship between the GMA and the Shoreline Management Act. These two statutes cover many similar topics. The commission and the state Department of Ecology will be reviewing ways to bring the two statutes together into a coherent whole.

Finally, the commission is continuing to explore ways to integrate other land use and environmental laws with the GMA, the overall objective assigned to the commission.



## State GMA grants reduced

The state budget for the next two years provides CTED with a reduced amount of "incentive" grants. These grants will be provided for cities and counties that had comprehensive plans and development regulations due under the Growth Management Act before June 1, 1997, and that are not eligible for assistance under the monitoring program. For July 1, 1997, through June 30, 1999, a total of \$910,865 is available to those jurisdictions.

Funding will continue at the same level as the last two years for 36 jurisdictions in Spokane, Lewis, and Stevens counties that have due dates after June 1, 1997.

In addition, the two-year state budget provides \$2 million for grants to help six counties and the cities within them develop a monitoring program.



**League of Women Voters of  
Washington Education Fund**

### League growth management awards nominations due July 15

**T**he League of Women Voters of Washington Education Fund is sponsoring a state-wide Growth Management Awards Program.

In announcing the awards program, League president Alice Stolz stated that "Throughout the state, thousands of citizens from all sectors of their communities have been working with their local governments to develop effective tools for managing growth. And they are succeeding." The League is impressed with the collaboration, consensus, and just plain hard work that characterize local efforts to manage growth, Stolz said. With this award, the League will recognize the best of these efforts. Anyone may submit a nomination. The League seeks nominations for outstanding efforts to manage growth in the following categories:

- ☐ Plans
- ☐ Projects
- ☐ Programs to involve or inform the public, and
- ☐ People

Nominations may be submitted until July 15, 1997. Winners will be announced in mid-September. Nomination forms are available from the League of Women Voters of Washington, 1411 Fourth Avenue Building, Suite 803, Seattle, WA 98101. Forms can also be requested from the League by calling 206-622-8961 or by sending a fax to 206-622-4908.

## "Buildable Lands." Where to from here?

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and determine how we can cooperatively and consistently meet its mandates. We also need to balance our response to the resources that will be made available.

In 1999, the King County County-wide Planning Policies require that the results of the benchmarks monitoring be used in an

evaluation. This will present a first opportunity to compare the outcome of our locally developed monitoring program with the state's new requirement. What we learn from that analysis, and how we respond will be a good pretest for the first state mandated evaluation that must be concluded by 2002.



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